

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRUCE WALKER)	
Claimant)	
VS.)	
)	Docket Nos. 196,172 & 196,173
GENERAL MOTORS CORPORATION)	
Respondent)	
Self-Insured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Robert H. Foerschler on April 29, 1996. The Appeals Board heard oral argument on September 17, 1996.

APPEARANCES

Claimant appeared by his attorney, Dennis L. Horner of Kansas City, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Jeffrey M. Pfaff of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by its attorney, David J. Berkowitz of Lawrence, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

The issues raised on appeal are as follows:

- (1) Compensability of claimant's asthma.
- (2) Nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that claimant suffered asthma as an occupational disease which arose out of and in the course of his employment. The decision by the Administrative Law Judge on that issue should be reversed.

The Appeals Board first finds that asthma should be treated under the Workers Compensation Act as an occupational disease. Asthma is described by claimant's treating doctor, Ann M. Romaker, M.D., as a reversible obstructive airway disorder. Inhalation of certain kinds of agents into the lung causes a constriction of the bronchial tubes. The person experiences difficulty breathing. In our view, asthma is a condition, at least under the circumstances presented here, that does not appropriately fit the definition of an accidental injury found in K.S.A. 1994 Supp. 44-508(d) but rather fits more squarely the generally accepted definitions of a disease.

K.S.A. 44-5a01 defines occupational disease and at the same time sets forth criteria for compensability as follows:

“‘Occupational disease’ shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. ‘Nature of the employment’ shall mean, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease which distinguishes the employment from other occupations and employments, and which creates a hazard of such disease which is in excess of the hazard of such disease in general. The disease must appear to have had its origin in a special risk of such disease connected with the particular type of employment and to have resulted from that source as a reasonable consequence of the risk. Ordinary diseases of life and conditions to which the general public is or may be exposed to outside of the particular employment, and hazards of diseases and conditions attending employment in general, shall not be compensable as occupational diseases:”

For purposes of this case, the statutory requirements can be divided into three general categories. First, to be compensable, the disease must: (1) arise out of and in the course of claimant's employment; (2) result from a special risk or hazard of such disease

which occurs in the particular type of employment; and, (3) must be something other than an ordinary disease of life.

In this case it is essentially undisputed that claimant's asthma was not caused by claimant's employment. The factual dispute concerns rather whether claimant's asthma was permanently aggravated or worsened by exposure to fumes, dust, and smoke in his employment. The record includes the testimony of Dr. H. William Barkman, Jr., who testified on behalf of the respondent that one could not attribute claimant's asthmatic condition to the conditions of his work with respondent. He further testified that one could not conclude that the exposures at General Motors made claimant's condition worse. The Appeals Board finds more convincing, however, the testimony of Dr. Gerald R. Kerby. He also concludes that the asthma was not caused by conditions at work. However, it was his opinion that claimant's asthmatic condition is probably worse now than it would have been without the exposures at General Motors. As he describes the process, the more asthmatic attacks a person suffers, the more bronchial inflammation occurs and the asthma is made worse. The fact that claimant's condition was made worse by the exposures while working for respondent does, in our view, satisfy the requirement that claimant's condition arose out of and in the course of his employment.

The Appeals Board also concludes that the evidence establishes that the employment involved a particular and peculiar hazard for such disease. At the time claimant was hospitalized in December 1994 he was working in the chassis department. This included working near a Wilson machine which has an exhaust containing oil contaminates. He was also working near the area where automobiles were filled with five gallons of gasoline and where antifreeze was installed in the radiator. Prior to that time he had worked in approximately seven different areas in the body shop as a pipe fitter. Claimant testified that he was exposed to irritants that he was not exposed to elsewhere. Dr. Romaker, the treating physician, wrote letters on at least two separate occasions explaining to the respondent that the paint fumes to which claimant was exposed in his work were a trigger for the asthma and should be avoided. The Appeals Board considers the exposure in his employment for respondent to be a particular and peculiar hazard which distinguishes that employment from other occupations and further considers it to be a hazard in excess of the hazard of such disease in general. See Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Finally, the Appeals Board does not consider this to be the type of ordinary disease of life excluded from coverage under the Workers Compensation Act. An asthma condition was considered by the Appeals Board in Strome v. N. R. Hamm Quarry, Docket No. 162,253 (January 1996). Respondent similarly argued in that case that the asthma was an ordinary disease of life. The Appeals Board there noted that ordinary disease of life is generally understood to include commonly encountered diseases which the general public is equally at risk of suffering without regard to their employment. The flu condition was cited as an example. The Act contains no specific definition or description of what is to be considered an ordinary disease of life. By some definitions almost all diseases might be considered ordinary diseases of life. The Appeals Board concludes, however, that definition

should be given a liberal construction to bring claimants within the coverage of the Act. In this case the Appeals Board does not consider claimant's asthmatic condition to be an ordinary disease of life.

For the above and foregoing reasons, the Appeals Board concludes that the decision by the Administrative Law Judge finding that claimant has not suffered a compensable disease should be reversed. As there has been no finding on the nature and extent, the claim will be remanded to the Administrative Law Judge for a finding on that issue.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated April 29, 1996, should be, and is hereby, reversed and remanded for findings regarding the nature and extent of claimant's disability and the amount of compensation due, if any.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Jeffrey M. Pfaff, Kansas City, MO
David J. Berkowitz, Lawrence, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director